**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF TEXAS**
**AUSTIN DIVISION**

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| **KENNETH A. LIPSON, KENNETH MOSKOWITZ, KENNETH MOSKOWITZ FAMILY LIMITED PARTNERSHIP, LEONARD MOSKOWITZ and BELLA VISTA EXPANSION L.P.** | § § § § § § § | |
| **v.** | § § § | **CASE NO. 1:13-CV-00487-LY** |
| **MATTHEW Q. HAINLINE, JEFFRY SCHNEIDER, BLACKHAWK DEVELOPMENT LLC, BELLA VISTA SPRINGS G.P. LLC, BELLA VISTA DRIPPING L.P., BVD G.P. INC., and DRIPPING SPRINGS HOLDINGS LLC** | § § § § § § | |

**PLAINTIFFS' AMENDED COMPLAINT**

Plaintiffs Kenneth A. Lipson, Kenneth Moskowitz, Kenneth Moskowitz Family Limited Partnership, Leonard Moskowitz and Bella Vista Expansion L.P. complain of Defendants Matthew Q. Hainline, Jeffry Schneider, Blackhawk Development LLC, Bella Vista Springs G.P. LLC, Bella Vista Dripping L.P., BVD G.P. Inc. and Dripping Springs Holdings LLC, and in support thereof would show:

## I. PARTIES

1. Plaintiff Kenneth A. Lipson is a California resident.

2. Plaintiff Kenneth Moskowitz Family Limited Partnership is a New York limited partnership.

3. Plaintiff Kenneth Moskowitz is a New York resident.

4. Plaintiff Leonard Moskowitz is a Florida resident.

5. Derivative Plaintiff Bella Vista Expansion L.P. is a Texas limited partnership.

6. Defendant Matthew Q. Hainline resides in Austin, Travis County, Texas, and may

be served with process at 6863 Bee Caves Road, Suite 202, Austin, Travis County, Texas 78746.

7. Defendant Jeffry Schneider resides in Austin, Travis County, Texas, and may be served with process at the offices of Devine Capital Markets LLC, 7004 Bee Caves Road III, Suite 300, Austin, Travis County, Texas 78746.

8. Defendant Blackhawk Development LLC is a Texas limited liability doing business at 6863 Bee Caves Road, Suite 202, Austin, Travis County, Texas 78746 (its "principal office"), and may be served with process by serving Matthew Q. Hainline, its registered agent, at that address.

9. Defendant Bella Vista Springs G.P. LLC is a Texas limited liability company doing business at 6863 Bee Caves Road, Suite 202, Austin, Travis County, Texas 78746 (its "principal office"), and may be served with process by serving Matthew Q. Hainline, its registered agent, at that address.

10. Defendant Bella Vista Dripping L.P. is a Texas limited partnership doing business at 6863 Bee Caves Road, Suite 202, Austin, Travis County, Texas 78746 (its "principal office"), and may be served with process by serving Matthew Q. Hainline, its registered agent, at that address.

11. Defendant BVD G.P. Inc. is a Texas corporation doing business at 6863 Bee Caves Road, Suite 202, Austin, Travis County, Texas 78746 (its "principal office"), and may be served with process by serving Matthew Q. Hainline, its registered agent, at that address. Matthew Q. Hainline owns 100% of BVD G.P. Inc., and BVD G.P. Inc. is the general partner of Bella Vista Dripping L.P.

12. Defendant Dripping Springs Holdings LLC is a Texas limited liability company purporting to do business in Travis County, Texas, and may by served with process by serving

Corporation Service Company, its registered agent, at 211 East 7th Street, Suite 620, Austin, Texas 78701.

## II. DISCOVERY LEVEL 2

13. Subject to remand, discovery will be conducted in accordance with TEX. R. CIV. P. 190.3.

## III. JURISDICTION AND VENUE

14. Plaintiffs do not contend that the federal district court has subject matter jurisdiction. Rather, Plaintiffs seek a remand of this action to state court. This Amended Complaint is being filed coincident with the filing of Plaintiffs' Unopposed Motion to Remand and Memorandum in Support Thereof.

15. Plaintiffs seek monetary relief over $1,000,000.00. Venue is proper in Travis County, Texas, pursuant to:

- TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2) because Travis County is the county of the residences of Defendant natural persons at the time the causes of action accrued,
- TEX. CIV. PRAC. & REM. CODE § 15.002(a)(3) because Travis County is the county of Defendant non-natural persons' principal offices in Texas,
- TEX. CIV. PRAC. & REM. CODE § 15.005 because, in a suit in which the plaintiff has established proper venue against a defendant, the court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence or series of transactions or occurrences, and
- TEX. CIV. PRAC. & REM. CODE § 15.020 and 15.035 because this lawsuit concerns major transactions with an aggregate value exceeding $1,000,000.00 in which a Subscription Agreement contains a venue selection clause whereby the parties consented to the exclusive jurisdiction of any court located within Travis County, Texas, in connection with any matter based upon or arising out of the Subscription Agreement, and in which a Limited Partnership Agreements for Bella Vista Expansion L.P. and Bella Vista Dripping L.P. provide that the partners waive the right to commence an action in connection with those Limited Partnership Agreements in any court outside of Travis County, Texas.

## IV. PERTINENT FACTS

16. This lawsuit concerns an offering and purchase of limited partnership and security interests in Bella Vista Expansion L.P. for the purpose of acquiring Bella Vista Dripping Springs, a 164-acre residential real estate development northwest of the community of Dripping Springs in Hays County, Texas, described in promotional materials as follows:

> This Property offers fantastic views and has two of the highest hilltops in the area with 360 degree views of the surrounding Hill Country including Barton Creek. There are seven different water features including two water wells, a spring fed pond and a flowing creek. A Conservation Reserve to the west and 20 acre ranch lots to the east of the property ensure that the surrounding area will never be developed. An access easement bisects the ranch, providing access to the conservation reserve.

17. Blackhawk Development LLC, a real estate and land development company whose key personnel in 2007 were Matthew Q. Hainline, Steve Huckabee, Kristy Ellison, Scott Tomhave and Jason Lindstrom, was promoting and seeking investments in Bella Vista Dripping Springs, a 163.65 acre residential real estate development project. The offering was promoted by real estate developer/promoter Matthew Q. Hainline, and by Jeffry Schneider, who was then purporting to act as an account representative, broker/dealer and/or investment advisor with Puritan Securities Inc. Hainline and Schneider and their agents represented to Plaintiffs Kenneth A. Lipson, Kenneth Moskowitz, Kenneth Moskowitz Family Limited Partnership, and Leonard Moskowitz that:

a. Blackhawk Development LLC is purchasing Bella Vista Dripping Springs, a scenic 164-acre tract in Dripping Springs, Hays County, Texas.

b. The developers have in place a Development Agreement with the City of Dripping Springs and with a Hays County Municipal Utility District allowing for an 86-lot subdivision.

c. The property has been divided into 86 large lots specifically created for custom home builders for an initial investment of $5,750.000.

d. A lot sales program will begin as soon as November 2007.

e. Projected lot sales are expected to exceed $11,649,569 which will net investors 20%+ annually over 18 months after all construction and fees.

f. Expected time horizon: 12-18 months.

18. In furtherance of the promotion, Hainline and Schneider and their agents presented each of the Plaintiffs with a Confidential Private Placement Memoranda, proposed Agreements of Limited Partnership for Bella Vista Expansion L.P. and Bella Vista Dripping L.P., and Subscription Agreements, contemplating an arrangement whereby Plaintiffs would purchase limited partnership and security interests in Bella Vista Expansion L.P., and whereby Bella Vista Expansion L.P. would become the sole limited partner of Bella Vista Dripping L.P., which held title to the 163.65 acre residential real estate development project.

19. Contrary to the promotional materials representing that Blackhawk Development LLC would purchase the 163.65 acre tract of land, the Confidential Private Placement Memoranda represented that the business objective of Bella Vista Expansion L.P. was to:

a. acquire a 163.65 acre tract of land from Bella Vista Dripping L.P., and to complete the development and sale of such land;

b. in lieu of purchasing the land directly, use proceeds of the securities offering to purchase all of the limited partnership interests of Bella Vista Dripping L.P.; and

c. in purchasing all of the limited partnership interests of Bella Vista Dripping L.P., become the sole limited partner of Bella Vista Dripping L.P.

20. The Confidential Private Placement Memoranda represented that the offering and sale of the limited partnership and security interests "will be exempt from registration under the Securities Act of 1933, as amended, and the various state securities laws, and that the partnership

will not be registered as an investment company under the Investment Company Act of 1940, as amended." The limited partnership interests were nevertheless described as "speculative securities" involving "substantial risks and certain material conflicts of interest."

21. The Confidential Private Placement Memoranda represented that it was the intention of Bella Vista Dripping L.P. to "develop the utilities and roads appropriate for a residential development of the land, subdivide the land into lots, and to thereafter sell the lots for residential home construction to individual home owners, investors and home builders."

22. The Confidential Private Placement Memoranda represented that the 163.65 acre tract of land "has been through several stages of development approvals," and that "the land is now in the latter approval stages for ultimately subdividing for sale to the public."

23. The Confidential Private Placement Memoranda represented that it was "anticipated" that Bella Vista Dripping L.P. "will need to obtain debt financing from a bank or other lending source in order to fund the development of roads and utilities and to provide operating capital until proceeds from the sale of lots is sufficient to fund such operations," and that "results are dependent upon it being able to receive the remaining permits and approvals in a timely manner required to subdivide and sell the Land."

24. The Confidential Private Placement Memoranda represented that, in order to prepare the land for subdivision and resale, Bella Vista Dripping L.P. "must negotiate and complete a water supply agreement, obtain a waste water permit and power agreements, and it must negotiate and complete construction agreements for build-out of utilities and roads, and the utilities and roads must be constructed and put in place."

25. As represented in the Confidential Private Placement Memorandum:

a. Plaintiffs would purchase limited partnership interests in Bella Vista Expansion L.P.;

b. Bella Vista Springs G.P. LLC is the general partner of Bella Vista Expansion L.P.;

c. Matthew Q. Hainline owns 100% of Bella Vista Springs G.P. LLC.;

d. Bella Vista Expansion L.P. would purchase and be the sole limited partner of Bella Vista Dripping L.P.;

e. BVD GP Inc. is the general partner of Bella Vista Dripping L.P.;

f. Matthew Q. Hainline owns 100% of BVD G.P. Inc.;

g. Matthew Q. Hainline owned 59.9% of Bella Vista Dripping L.P., and would sell his interest to Bella Vista Expansion L.P.; and

h. Albini Family Limited Partnership and La Familia Limited Partnership owned 40% of Bella Vista Dripping L.P., and would sell their interest to Bella Vista Expansion L.P.

26. Thus, as represented in the Confidential Private Placement Memorandum, Matthew Q. Hainline not only profited by selling his interest in Bella Vista Dripping L.P. to Bella Vista Expansion L.P., he would also, "through his ownership of the two general partners, effectively control" both Bella Vista Expansion L.P. and Bella Vista Dripping L.P.

27. Additionally, as represented in the Confidential Private Placement Memorandum, Bella Vista Expansion L.P. "will pay a management fee" to Bella Vista Springs G.P. LLC (and thus to Matthew Q. Hainline) quarterly in advance at an annual rate of 2% of the aggregate amount of the total proceeds raised in the Offering, intended to cover "expenses related to the monitoring" of the investments of Bella Vista Expansion L.P., including "salaries, employee benefits, office expenses, travel, entertainment and bookkeeping." Thus, if the Offering raised $5,750.000, then Matthew Q. Hainline would receive an annual management fee of $115,000. However, according to the Confidential Private Placement Memorandum, "it is anticipated that a substantial portion of Matthew Q. Hainline's time will be devoted to entities other than Bella

Vista Expansion L.P."

28. As represented in the Confidential Private Placement Memorandum, Bella Vista Expansion L.P. will reimburse Bella Vista Springs G.P. LLC (and thus Matthew Q. Hainline) for its expenses incurred in organizing and selling interests in Bella Vista Expansion L.P. which Bella Vista Springs G.P. LLC estimates that such expenses "will be approximately $330,000."

29. As represented in the Confidential Private Placement Memorandum, BVD GP Inc. (and thus Matthew Q. Hainline) "should receive significant municipal incentives from the development of the land, the majority of which will not accrue" to Bella Vista Expansion L.P. or to Bella Vista Dripping L.P.

30. As represented in the Confidential Private Placement Memorandum, Bella Vista Expansion L.P. "will be responsible for all expenses related to its operations, including fees, costs and expenses" of Bella Vista Expansion L.P. or its general partner Bella Vista Springs G.P. LLC incurred in connection with the potential purchase by Bella Vista Expansion L.P. of the limited partnership interests of Bella Vista Dripping L.P. and the acquisition, financing (including any portfolio debt), holding, sale, proposed sale or valuation of any other investment (including repayment of those financings and the costs related to establishing and maintaining a credit facility for Bella Vista Expansion L.P.), all litigation-related and indemnification expenses, fees of auditors and counsel, administrative expenses, and any taxes, fees or other governmental charges levied against Bella Vista Expansion L.P.

31. As represented in the Confidential Private Placement Memorandum, the limited partners of Bella Vista Expansion L.P. would receive (a) quarterly reports of Partnership operations, (b) unaudited annual financial statements of Partnership operations, and (c) tax information necessary for completion of Partner income tax returns.

32. Beginning in December 2007 and thereafter, consistent with the representations in the Confidential Private Placement Memorandum, and pursuant to the terms of a Subscription Agreement with Bella Vista Expansion L.P., Plaintiffs invested the following amounts:

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| Kenneth A. Lipson | $200,000.00 |
| Kenneth Moskowitz | $750,000.00 |
| Kenneth Moskowitz Family L.P. | $250,000.00 |
| Leonard Moskowitz | $250,000.00 |
| Total investment by Plaintiffs | $1,450,000.00 |

33. The investments were received and acknowledged by Matthew Q. Hainline, sole member of Bella Vista Springs G.P. LLC (general partner of Bella Vista Expansion L.P., and sole owner of BVD G.P. Inc. (general partner of Bella Vista Dripping L.P.), and by Jeffry Schneider, broker or agent for the transactions, who received a substantial commission from the invested funds.

34. Coincident therewith, each Plaintiff entered into a Subscription Agreement and an Agreement of Limited Partnership of Bella Vista Expansion L.P., and, upon information and belief, Bella Vista Expansion L.P. acquired all of the limited partnership interests of Bella Vista Dripping L.P.

35. As a consequence of their investment of $1,450,000.00, Plaintiffs hold limited partnership interests in Bella Vista Expansion L.P., which is the sole limited partner of Bella Vista Dripping L.P., which, upon information and belief, holds title to the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs.

36. Per the terms of the Agreement of Limited Partnership of Bella Vista Expansion L.P., its general partner Bella Vista Springs G.P. LLC "shall take all actions which may be

necessary or appropriate…for the accomplishment of the Partnership's purposes, including the acquisition, development, maintenance, preservation and operation of the Property."

37. Per the terms of the Agreement of Limited Partnership of Bella Vista Expansion L.P., its general partner Bella Vista Springs G.P. LLC "shall be under a fiduciary duty to conduct the affairs of the Partnership in the best interests of the Partnership and of the Limited Partners."

38. Per the terms of the Agreement of Limited Partnership of Bella Vista Expansion L.P., each limited partner (that is, each Plaintiff) shall annually be furnished with pertinent information regarding the Partnership and its activities.

39. Per the terms of the Agreement of Limited Partnership of Bella Vista Expansion L.P., except as agreed to by the unanimous consent of the Partners, a limited partner shall be liable only for its initial capital contribution, and in the event that the Partnership requires amounts in excess of the initial capital contribution, then the general Partner (Bella Vista Springs G.P. LLC) shall use its best efforts to obtain institutional third party financing (i.e. loan or equity financing by a financial institution) to fund operating deficiencies.

40. Per the terms of the Agreement of Limited Partnership of Bella Vista Expansion L.P., additional limited partnership interests could be created and issued to existing limited partners or to other persons on such terms and conditions as the general partner (Bella Vista Springs G.P. LLC) may determine so long as such action does not alter the interest of a Partner in profits, losses, component items thereof, or Partnership distributions.

41. Following the purchase by Plaintiffs of limited partnership interests in Bella Vista Expansion L.P., in April 2008, Bella Vista Springs G.P. LLC obtained an 18-month bank loan in the amount of $1,620,000.00 "to fund the entitlement and legal work, engineering, property management, maintenance, pay taxes, operate the Municipal Utility District among other

required operations."

42. However, the limited partners of Bella Vista Expansion L.P. did not receive quarterly reports or unaudited annual financial statements or other pertinent information regarding Partnership operations, and Bella Vista Springs G.P. LLC did not provide evidence that it developed roads or utilities or that it subdivided and sold subdivided lots or took all actions which may be necessary or appropriate for the accomplishment of the Partnership's purposes, including the acquisition, development, maintenance, preservation and operation of the Property.

43. Instead, in August 2010, contrary to the terms of the Agreement of Limited Partnership and the Confidential Private Placement Memorandum, Bella Vista Springs G.P. LLC sent a letter requesting either a 10% or 30% cash call (to pay down the promissory note and for fees and debt service) and proposing a "quick sale" of the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs at a substantial loss (a discount of more than 80%) in lieu of foreclosure.

44. Additionally, in October 2010, contrary to the terms of the Agreement of Limited Partnership and the Confidential Private Placement Memorandum, Bella Vista Springs G.P. LLC proposed to amend the Agreement of Limited Partnership to allow Bella Vista Springs G.P. LLC to raise additional capital by the issuance of additional limited partnership interests, which would have the effect of diluting the limited partnership interests of the Partners and reducing the value of their investments.

45. In March 2013, Plaintiffs received a letter from David Gentile, an associate of Jeffry Schneider at GPB Capital LLC, advising Plaintiffs that "Dripping Springs Holdings LLC has recently acquired the 163.65 acres in or about Dripping Springs, Texas, previously held by

Bella Vista Dripping L.P." However, Plaintiffs own the limited partnership interests in Bella Vista Expansion L.P., which is the sole limited partner of Bella Vista Dripping L.P. (which was purported to have title to the 163.65 acre tract of land known as Bella Vista Dripping Springs, and Bella Vista Dripping L.P. could not legally sell the 163.65 acre tract of land known as Bella Vista Dripping Springs absent an agreement with, and compensation to, the limited partners in the limited partnership which is the sole limited partner of Bella Vista Dripping L.P. Given that there was no agreement among the limited partners of Bella Vista Expansion L.P. to sell the 163.65 acre tract of land known as Bella Vista Dripping Springs, any such sale would be illegal, and Dripping Springs Holdings LLC therefore wrongfully holds, or purports to hold, an interest in the 163.65 acre tract and real estate development known as Bella Vista Dripping Springs.

## V. CONDITIONS PRECEDENT

46. All conditions precedent to recovery have been preformed or have occurred.

## VI. CAUSES OF ACTION

47. Plaintiffs initiate and pursue this action individually and, in part, as a derivative action on behalf of Bella Vista Expansion L.P. under TEX. BUS. ORG. CODE § 153.401 et seq., as:

a. Bella Vista Springs G.P. LLC, the general partner of Bella Vista Expansion L.P., and Matthew Q. Hainline, the sole member of Bella Vista Springs G.P. LLC, are target defendants in this action, and an effort to cause Bella Vista Springs G.P. LLC and Matthew Q. Hainline to bring the action is not likely to succeed, as Bella Vista Springs G.P. LLC. and Matthew Q. Hainline would not likely agree to sue themselves or to be held accountable for their transgressions; and

b. Plaintiffs Kenneth A. Lipson, Kenneth Moskowitz, Kenneth Moskowitz Family Limited Partnership and Leonard Moskowitz have been and continue to be limited partners in Bella Vista Expansion L.P., and therefore have a statutory right to bring this action derivatively, in whole or in part.

## COUNT 1 – BREACH OF FIDUCIARY DUTY

48. Plaintiffs incorporate the foregoing paragraphs by reference.

49. Pursuant to Section 5.5 of the Agreement of Limited Partnership of Bella Vista Expansion L.P., Defendant Bella Vista Springs G.P. LLC is under an express fiduciary duty to conduct the affairs of the Partnership in the best interests of the Partnership and of the Limited Partners, and has a corresponding duty not to act in its own self interest. Likewise, pursuant to the Agreement of Limited Partnership of Bella Vista Dripping L.P., Defendant BVD G.P. Inc. is under an implied fiduciary duty to conduct the affairs of the Partnership in the best interests of the Partnership and of the Limited Partners, and has a corresponding duty not to act in its own self interest. Because of the express and implied fiduciary relationship, Plaintiffs reposed a special confidence in Bella Vista Springs G.P. LLC acting through its sole member Matthew Q. Hainline, and in Bella Vista Dripping L.P., acting through its sole owner Matthew Q. Hainline.

50. Bella Vista Springs G.P. LLC, acting through its sole member Matthew Q. Hainline, and Bella Vista Dripping L.P., acting through its sole owner Matthew Q. Hainline, breached their fiduciary duties to Plaintiffs by failing to provide quarterly reports or unaudited annual financial statements or other pertinent information regarding Partnership operations, by failing to develop roads or utilities or to subdivide and sell lots or to take all actions which may be necessary or appropriate for the accomplishment of the Partnership's purposes, including the acquisition, development, maintenance, preservation and operation of the Property, by saddling Bella Vista Expansion L.P. with bank debt in the amount of $1.458 million (despite the fact that the Confidential Private Placement Memorandum represents that any debt financing would be incurred by Bella Vista Dripping L.P.), and ultimately by wrongfully conveying the 163.65 acre tract of land to Bella Vista Holdings LLC.

51. The breach of fiduciary duty by Bella Vista Springs G.P. LLC, BVD G.P. Inc. and Matthew Q. Hainline has resulted in injury and damages to Plaintiffs, who invested $1,450,000.00, and resulted in a benefit to Bella Vista Springs G.P. LLC, BVD G.P. Inc. and Matthew Q. Hainline, who took immediate possession of the invested funds, who have not returned the funds, and who have instead engaged in self-dealing.

52. Plaintiffs seek to recover damages as a result of the breach of fiduciary duty by Defendants Bella Vista Springs G.P. LLC, BVD G.P. Inc. and Matthew Q. Hainline, including but not limited to full recovery of their initial investments totaling $1,450,000.00.

**COUNT 2 – BREACH OF CONTRACT**

53. Plaintiffs incorporate the foregoing paragraphs by reference.

54. The promotional materials, the Confidential Private Placement Memorandum, the Agreement of Limited Partnership of Bella Vista Expansion L.P., the Agreement of Limited Partnership of Bella Vista Dripping L.P., and the Subscription Agreement constitute valid, enforceable contracts, and Plaintiffs Kenneth A. Lipson, Kenneth Moskowitz, Kenneth Moskowitz Family Limited Partnership, Leonard Moskowitz and Bella Vista Expansion L.P. are proper parties to sue for breach of contract.

55. Plaintiffs performed, tendered performance, or were excused from performing their contractual obligations. In contrast, Defendants Bella Vista Springs G.P. LLC and its sole member Matthew Q. Hainline, and BVD G.P. Inc. and its sole owner Matthew Q. Hainline, breached and failed to perform the contracts, causing injury and damages to Plaintiffs.

56. Plaintiffs seek to recover damages as a result of the breach by Defendants Bella Vista Springs G.P. LLC, BVD G.P. Inc. and Matthew Q. Hainline, including but not limited to full recovery of their initial investments totaling $1,450,000.00, or, in the alternative, rescission

of the contracts and restitution of the total initial investments, plus recovery of reasonable and necessary attorney fees.

**COUNT 3 – STATUTORY FRAUD**

57. Plaintiffs incorporate the foregoing paragraphs by reference.

58. The promotional materials, the Confidential Private Placement Memorandum, the Agreement of Limited Partnership of Bella Vista Expansion L.P., the Agreement of Limited Partnership of Bella Vista Dripping L.P., and the Subscription Agreement, taken together, constituted a securities transaction involving real estate, as contemplated by TEX. BUS. & COM. CODE § 27.01.

59. As represented in the Confidential Private Placement Memorandum, the business objective of Bella Vista Expansion L.P. was to use Plaintiffs' money to acquire a 163.65 acre tract of land from Bella Vista Dripping L.P., and to complete the development and sale of such land, and Plaintiffs invested $1,450,000.00 to meet that objective. As a consequence, Bella Vista Expansion L.P. acquired the limited partnership interests of Bella Vista Dripping L.P., which owned the subject 163.65 acre tract, such that Bella Vista Expansion L.P. came to own and control the subject 163.65 acre tract.

60. However, as an inducement to enter into the transaction and to invest $1,450,000.00, Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and their agents made false representations of fact, or made false promises, or benefited by not disclosing that any of their representations or promises were false. Defendants' representations or promises were made for the purpose of inducing Plaintiffs to enter into the Confidential Private Placement Memorandum, the Agreement of Limited Partnership of Bella Vista Expansion L.P., and the Subscription

Agreement, and Plaintiffs relied upon the false representations or promises by entering into the Confidential Private Placement Memorandum, the Agreement of Limited Partnership of Bella Vista Expansion L.P., and the Subscription Agreement. Such reliance by Plaintiffs caused them injury.

61. Plaintiffs seek to recover damages as a result of the statutory fraud by Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline and Jeffry Schneider, including but not limited to full recovery of Plaintiffs' initial investments totaling $1,450,000.00, or, in the alternative, rescission of transaction involving real estate and restitution of total initial investments, plus other statutory remedies including reasonable and necessary attorney fees and costs.

**COUNT 4 – SECURITIES FRAUD**

62. Plaintiffs incorporate the foregoing paragraphs by reference.

63. Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and their agents offered to Plaintiffs limited partnership interests which are considered securities under state and federal law.

64. Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and their agents represented in the Subscription Agreement that the offering of securities to Plaintiffs was not registered under the Securities Act of 1933, as amended, and that it was made pursuant to Rule 506 of Regulation D under Section 4(2) of such Act, which exempts from registration transactions not involving a public offering subject to certain suitability requirements.

65. Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and their agents did not assert a specific

exemption under the Texas Securities Act, TEX. REV. CIV. ST. Art. 581-5.

66. However, a person who offers or sells a security by means of any untrue statement of a material fact is liable if the purchaser does not know the untruth, or if the seller fails to state a material fact that is necessary to prevent other statements from being misleading in light of the circumstances under which they were made. In either case, it is no defense that the security or transaction is exempt under relevant statutes.

67. Under the Texas Securities Act, TEX. REV. CIV. ST. Art. 581-33(A)(1), a person who offers or sells a security in violation of the Act is liable to the person buying the security from him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security, and a person who directly or indirectly controls a seller or issuer of a security is liable under the Act jointly and severally with the seller or issuer, and to the same extent as if he were the seller or issuer.

68. Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and their agents made material false representations to Plaintiffs regarding the stage of development of the 163.65 acre tract of land known as Bella Vista Dripping Springs, including "the land is now in the latter approval stages for ultimately subdividing for sale to the public," that they would provide quarterly reports and annual unaudited financial statements of Partnership operations, and that they had the ability to develop the Property for resale within the represented timeframe of 12 to 18 months.

69. When Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and their agents made representations regarding the development, management, subdividing, and resale of the Property, the Defendants knew the representations were false or were made recklessly, as a positive assertion, and without

knowledge of their truth. The Defendants made the representations with the intent that Plaintiffs act upon them.

70. Plaintiffs relied and acted on the representations, invested $1,450,000.00 in the Partnership, were injured thereby, as the Property was not developed or subdivided, and the lots were not resold.

71. Plaintiffs seek to recover damages as a result of the securities fraud by Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline and Jeffry Schneider, including but not limited to full recovery of their initial investments totaling $1,450,000.00, or, in the alternative, rescission of transaction involving real estate and restitution of total initial investments, plus other statutory remedies including reasonable and necessary attorney fees and costs.

**COUNT 5 – AIDING AND ABETTING**

72. Plaintiffs incorporate the foregoing paragraphs by reference.

73. Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider, Bella Vista Dripping L.P. and Dripping Springs Holdings LLC are jointly and severally liable for the causes of action asserted herein because they were either primary actors or had knowledge of the primary actors' conduct, and they either assisted the primary actors in their conduct (by promoting fraud, keeping silent regarding the fraud, failing to report the fraud, and receiving investor proceeds), or gave the primary actors aid, assistance and cooperation, and such aid, assistance and cooperation was a substantial factor in causing injury and damages to Plaintiffs.

**COUNT 6 – CONVERSION**

74. Plaintiffs incorporate the foregoing paragraphs by reference.

75. Through their limited partnership interests in Bella Vista Expansion L.P., and because Bella Vista Expansion L.P. was the sole limited partner of Bella Vista Dripping L.P., Plaintiffs paid for, own, possess, and have the right to immediate possession of the limited partnership interests of Bella Vista Dripping L.P., which holds title to the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs. The limited partnership interests in Bella Vista Expansion L.P. and Bella Vista Dripping L.P. are personal property.

76. Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider, Bella Vista Dripping L.P. and Dripping Springs Holdings LLC have wrongfully exercised dominion or control over Plaintiffs' personal property interests, and Plaintiffs have suffered injury thereby, including but not limited to their entire investment, ownership and control of the Bella Vista Dripping Springs real estate development.

77. Plaintiffs seek to recover damages as a result of the conversion by Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider, Bella Vista Dripping L.P. and Dripping Springs Holdings LLC, including but not limited to full recovery of their initial investments totaling $1,450,000.00, or, in the alternative, rescission of transaction involving real estate and restitution of total initial investments, plus other remedies including exemplary damages and reasonable and necessary attorney fees and costs.

**COUNT 7 – THEFT OF PROPERTY**

78. Plaintiffs incorporate the foregoing paragraphs by reference.

79. Under the Texas Theft Liability Act, TEX. CIV. PRAC. & REM. CODE § 134.001 et

seq., a person who commits theft by unlawfully appropriating property with intent to deprive the owner of property is liable for resulting damages, and appropriation of property is unlawful if it is without the owner's effective consent.

80. Plaintiffs paid for, own, possess (i.e. have actual care, custody and control), and are limited partners in a limited partnership that solely owns Bella Vista Dripping L.P., which holds sole title to the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs. Plaintiffs thus have a greater right of possession of the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs than any other person or entity, including the Defendants.

81. Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and Dripping Springs Holdings LLC have unlawfully appropriated Bella Vista Dripping L.P. and the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs, by taking it without Plaintiffs' knowledge, consent or compensation.

82. Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and Dripping Springs Holdings LLC unlawfully appropriated Bella Vista Dripping L.P. and the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs with the intent to deprive Plaintiffs of the property, and Plaintiffs have sustained damages as a result of the theft.

83. Plaintiffs seek to recover damages as a result of the theft by Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and Dripping Springs Holdings LLC including but not limited to full recovery of their initial investments totaling $1,450,000.00, plus other remedies including

exemplary damages and reasonable and necessary attorney fees and costs.

**COUNT 8 – SLANDER OF TITLE**

84. Plaintiffs incorporate the foregoing paragraphs by reference.

85. Plaintiffs paid for, own, possess (i.e. have actual care, custody and control), and are limited partners in a limited partnership that solely owns Bella Vista Dripping L.P., which holds sole title to the 163.65 acre tract of land and, and thus have a beneficial interest in the real estate development known as Bella Vista Dripping Springs.

86. Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and Dripping Springs Holdings LLC have "uttered or published disparaging words" by unlawfully and wrongfully asserting title to, and possession of, the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs. Specifically, Dripping Springs Holdings LLC purports to have acquired and hold title to the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs. However, Plaintiffs, who are limited partners in the limited partnership that wholly owns Bella Vista Dripping L.P., did not consent to a sale by Bella Vista Dripping L.P. of the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs. Defendants, who have no rightful interest in the 163.65 acre tract of land and real estate development known as Bella Vista Dripping Springs, and who have no right to dispossess Plaintiffs of their interest, deliberately and without reasonable cause—that is, maliciously—sold real property not belonging to them to Dripping Springs Holdings LLC.

87. The dispossession and sale by Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and Dripping Springs Holdings LLC of the 163.65 acre tract of land and real estate development known as

Bella Vista Dripping Springs absolutely caused Plaintiffs the loss of a specific sale.

88. Plaintiffs seek to recover actual damages as compensation for the loss of a specific sale, and seek to recover exemplary damages upon a showing that the conduct of Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and Dripping Springs Holdings LLC was fraudulent or malicious.

## VII. ATTORNEY'S FEES

89. Pursuant to TEX. CIV. PRAC. & REM. CODE § 38.001 et seq., Plaintiffs are entitled to recover, and seek recovery of, their reasonable and necessary attorney's fees.

## IX. PRAYER

Plaintiffs Kenneth A. Lipson, Kenneth Moskowitz, Kenneth Moskowitz Family Limited Partnership, Leonard Moskowitz and Bella Vista Expansion L.P. pray that Defendants Blackhawk Development LLC, Bella Vista Springs G.P. LLC, Bella Vista Dripping L.P., BVD G.P. Inc., Matthew Q. Hainline, Jeffry Schneider and Dripping Springs Holdings LLC be cited to appear and answer, and that on final hearing the court enter judgment for Plaintiffs and against Defendants for:

(a) Liability under Counts 1 through 8 of this Amended Complaint;

(b) Damages including recovery of Plaintiffs' initial investments totaling $1,450,000.00, or, in the alternative, rescission of the transaction and restitution of the investments;

(c) Exemplary damages;

(d) Prejudgment and post-judgment interest as allowed by law;

(e) Reasonable and necessary attorney's fees; and

(f) Costs of suit, and such other and further relief to which Plaintiffs may be entitled.

Respectfully submitted,

STRONG PIPKIN BISSELL & LEDYARD L.L.P.

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**Certificate of Service**

This will confirm that, on June 19, 2013, a true and correct copy of Plaintiffs' Amended Complaint was served by electronic mail on Defendants' counsel addressed as follows:

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